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Attorneys for Petitioner
Applera Corporation

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In Re:

ADOPTION OF SITE CLEANUP
REQUIREMENTS FOR: APPLERA
CORPORATION AND JR REALTY #2,
LLC FOR THE PROPERTY LOCATED AT
2690 CASEY AVENUE, MOUNTAIN
VIEW, SANTA CLARA COUNTY,
ORDER NO. R2-2007-0040

SWRCB FILE NO. _____

PETITION FOR REVIEW

[Water Code § 13320(a)]

This Petition for Review is submitted on behalf of Applera Corporation ("Petitioner") pursuant to California Water Code Section 13320(a) and California Code of Regulations ("CCR") Title 23, Section 2050, for review of Order No. R2-2007-0040, which was adopted by the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Board") on May 9, 2007.

1.0 NAME AND ADDRESS OF PETITIONER

Petitioner may be contacted through the following individuals:

Mr. Rick Podlaski
Applera Corporation
301 Merritt 7 (Main Avenue)
Norwalk, CT 06851
(203) 840-2626
podlasrt@applera.com

Karen J. Nardi, Esq.
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111
(415) 393-2050
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2.0 SPECIFIC ACTION OF THE REGIONAL BOARD FOR WHICH
REVIEW IS SOUGHT

Petitioner requests that the State Water Resources Control Board (the "State Board") review Order No. R2-2007-0040 (the "Order"), a copy of which is attached hereto as Exhibit A. The Order, issued pursuant to Water Code § 13304, names Petitioner and JR Realty #2 LLC ("JR Realty"), as dischargers. Petitioner's former subsidiary was a tenant at and JR Realty is the current owner of real property located at 2690 Casey Avenue in Mountain View, Santa Clara County. The Order requires Petitioner and JR Realty to address soil and groundwater contamination at 2690 Casey Avenue and the adjacent property located at 1201 San Antonio Road in Mountain View (collectively, the "Site"). The Order does not name the owner of the 1201 San Antonio Road property.

3.0 DATE OF ACTION FOR WHICH REVIEW IS SOUGHT

The Order was adopted by the Regional Board on May 9, 2007.

4.0 STATEMENT OF REASONS THE ACTION WAS INAPPROPRIATE
OR IMPROPER

The Regional Board's issuance of the Order naming Petitioner was inappropriate or improper because the Regional Board has not provided substantial evidence that Applera's former subsidiary "has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance" within the meaning of California Water Code § 13304. There is no substantial evidence that Applera's former subsidiary spilled or otherwise released tetrachloroethylene (PCE) and/or trichloroethylene (TCE), the primary chemicals of concern, at the Site, including along the property boundary between the 2690 Casey and 1202 San Antonio Road properties.

An additional reason that the Regional Board's issuance of the Order was inappropriate or improper is because the Regional Board did not name the owner of the 1201 San Antonio Road property, notwithstanding the Order will require that contamination at that site be

addressed. *See, e.g., Vallico Park, Ltd.*, State Board Order No. WQ 86-18 (“The ultimate responsibility for the condition of the land is with its owner.”)¹

5.0 MANNER IN WHICH PETITIONER HAS BEEN AGGRIEVED

Petitioner is aggrieved in that the Order requires Petitioner, under threat of penalty, to undertake extensive work and incur substantial costs in connection with the Site. This work and these costs should appropriately be shared by the owner of the 1201 San Antonio Road property.

6.0 REMEDY SOUGHT BY PETITIONER

Petitioner requests that the State Board initially hold this Petition for Review in abeyance pending fact gathering relating to the issues set forth above. Petitioner intends to comply with the Order, including performing a remedial investigation. Depending on the results of the investigation, Petitioner proposes to submit to the Regional Board the factual information it gathers during the remedial investigation along with an appropriate request to amend the Order to remove Petitioner and/or add the owner of the 1201 San Antonio Road as a discharger. If the Regional Board fails to provide the requested relief, Petitioner would request the State Board to reactivate and consider this Petition for Review. Petitioner further proposes to defer a request for a hearing, if any, pending the outcome of the fact gathering and response by the Regional Board to Petitioner’s request based on those facts.

7.0 POINTS AND AUTHORITIES

If Petitioner seeks to have this Petition for Review reactivated as discussed above, Petitioner will submit a statement of points and authorities with the request for reactivation.

8.0 NOTICE TO REGIONAL BOARD AND DISCHARGER

As indicated in the attached Proof of Service, a copy of this Petition for Review is being simultaneously served upon the Executive Officer of the Regional Board and to the other named discharger, JR Realty.

9.0 SUBSTANTIVE ISSUES RAISED BEFORE REGIONAL BOARD

Petitioner has previously raised before the Regional Board the substantive issues raised in this Petition for Review.

¹ Petitioner also disputes several findings that form the basis of the Order. However, as with other portions of this Petition for Review, Petitioner believes that it is premature to detail those deficiencies pending reactivation of this Petition for Review.

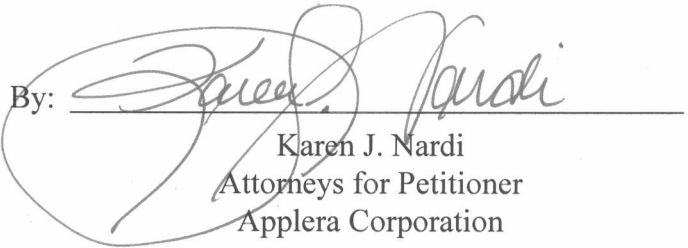
10.0 CONCLUSION

For the reasons stated herein, Petitioner believes it has been aggrieved by the Regional Board's action in adopting the Order. However, until such time as Petitioner requests the Regional Board to amend the Order as described above, Petitioner requests the State Board to hold this Petition for Review in abeyance.

DATED: June 7, 2007

Respectfully submitted,

BINGHAM McCUTCHEN LLP

By: 
Karen J. Nardi
Attorneys for Petitioner
Applera Corporation

PROOF OF SERVICE BY ELECTRONIC MAIL

I, Connie L. Noble, do hereby certify that on June 7, 2007 a true and correct copy of the enclosed **PETITION FOR REVIEW** was forwarded with the practice of this office for collection and processing in the ordinary course of business as indicated below:

- ☒ (BY E-MAIL) by transmitting via e-mail at **jbashaw@waterboards.ca.gov** the document(s) listed above on this date before 5:00 p.m.

California State Water Resources Control Board
Office of Chief Counsel
Attention: Jeannette L. Bashaw, Legal Secretary
P.O. Box 100
Sacramento, CA 95812-0100
jbashaw@waterboards.ca.gov

- ☐ (BY FACSIMILE) by transmitting via facsimile the document(s) listed above on this date before 5:00 p.m.
- ☐ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.
- ☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).
- ☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 7, 2007.



Connie L. Noble

PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in San Francisco, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business day delivery, and they are deposited that same day in the ordinary course of business.

Today I served the attached:

PETITION FOR REVIEW

by causing a true and correct copy of the above to be delivered by mail from San Francisco, California in sealed envelope(s) with all fees prepaid, addressed as follows:

California State Water Resources Control Board	Bruce H. Wolfe,
Office of Chief Counsel	Executive Officer
Attn: Jeannette L. Bashaw, Legal Secretary	San Francisco Bay Regional Water Quality
1001 I Street, 22 nd Floor	Control Board
Sacramento, CA 95814	1515 Clay Street, Suite 1400
	Oakland, CA 94612

Ken F. Strong, Esq.
Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 7, 2007.



Connie L. Noble

Karen J. Nardi
Direct Phone: 415.393.2050
Direct Fax: 415.262.9253
karen.nardi@bingham.com

June 7, 2007

Via Email and U.S. Mail

State Water Resources Control Board
Office of Chief Counsel
Attention: Jeannette L. Bashaw, Legal Secretary
P.O. Box 100
Sacramento, CA 95812-0100

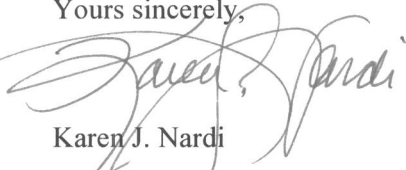
**Re: Petition for Review
Order No. R2-2007-0040
Applera Corporation**

Dear Ms. Bashaw:

Enclosed for filing, please find an original and one copy of the above referenced Petition for Review. Applera Corporation is submitting the Petition as a "protective" filing and, accordingly, requests that the State Board hold the Petition in abeyance.

Please return a file-stamped copy of the Petition in the self-addressed stamped envelope.

Yours sincerely,



Karen J. Nardi

Enclosure

cc: (By U.S. Mail only; with enclosure)
Ken F. Strong, Esq., JR Realty #2 LLC
Mr. Bruce H. Wolf, Executive Officer, S.F. Bay Regional Board

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
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